O.S. 1100/2

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

WRIT PETITION NO. 2200 OF 2004

PETITIONER:

Tapas Kumar Roy,
S/o Late A.C. Roy,
Aged about 44 years,
Second Officer,
Raigarh Regional Rural Bank,
Branch: Kabir Chowk,
Raigarh, Tehsil & District:
Raigarh, Chhattisgarh.

- Versus -

RESPONDENTS:

1. Raigarh Regional Rural Bank, Through: Its Chairman, Head Office, Raigarh Regional Rural Bank, Station Road, Raigarh, Chhattisgarh.

2. Board of Directors, Raigarh Regional Rural Bank, Station Road, Raigarh (C.G.)

3. Jairam Naik, Branch Manager, Raigarh Regional Rural Bank, Farsabahar, District: Jashpur (C.G.)

4. Laxmi Narayan Singh, Officer Scale-II, Raigarh Regional Rural Bank, Head Office: Raigarh, Raigarh (C.G.)

5. Ramesh Kumar Agrawal, Officer Scale-II, Raigarh Regional Rural Bank, Head Office: Raigarh, Raigarh (C.G.)

P.R. No. 2194/04
Presented by Shri Sanjay K. Agrawal
dated 23-5-04

(5)

6. Ashok Kumar Tiwari,
Branch Manager,
Raigarh Regional Rural Bank,
Dharamjaigarh,
District: Raigarh (C.G.)

7. Vinay Kumar Rakshit,
Branch Manager,
Raigarh Regional Rural Bank,
Jashpur Nagar,
District: Jashpur (C.G.)

8. Ganesh Ram Raj Chouhan,
Branch Manager,
Raigarh Regional Rural Bank,
Tamnar, District: Raigarh (C.G.)

9. Tekram Sidar, Branch Manager,
Raigarh Regional Rural Bank,
Rajpur, District: Jashpur (C.G.)

10. Surendra Kumar Borkar,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Manora, District: Jashpur (C.G.)

11. Ram Lal Mire, Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Dhorabhata,
District: Raigarh (C.G.)

12. Awadh Ram Vijan,
Scale-II Officer,
Raigarh Regional Rural Bank,
Head Office: Raigarh,
District: Raigarh (C.G.)

13. Ashok Kumar Shrivas,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Baramkela,
District: Raigarh (C.G.)

14. Vishnu Prasad Agrawal,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Sarangarh,
District: Raigarh (C.G.)

15. Roopchand Sahu,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Lailunga, District: Raigarh (C.G.)

16. Ajaz Akhtar,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Sanna, District: Jashpur (C.G.)

17. Ghan Shyam Patel,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Loing, District: Raigarh (C.G.)

18. Ganti Narayana Murthy,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Kabir Chowk, Raigarh,
District: Raigarh (C.G.)

19. Rajesh Kumar Agrawal,
Scale-II Officer,
Branch Manager,
Raigarh Regional Rural Bank,
Bagicha,
District: Jashpur (C.G.)

20. Nilambar Pr
Sca

(7)

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT, WRITS, DIRECTION ETC.

(190)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2200 of 2004

Petitioner Tapas Kumar Roy

Versus

Respondents Raigarh Regional Rural Bank and others

Post for order on 1st September, 2006.

Sd/-
Satish K. Agnihotri
Judge

(१९१)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2200 of 2004

Petitioner Tapas Kumar Roy

Versus

Respondents Raigarh Regional Rural Bank and others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Sanjay K. Agarwal, Advocate for the petitioner.

Shri P. R. Patankar, Advocate for the respondents No.1 and 2.

Shri P. S. Koshy, Advocate for the respondents No. 3 to 20.

ORDER

(15th September, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. In the present petition, the petitioner has sought for a writ of certiorari, seeking quashing of the promotion of the respondents No. 3 to 20 to the post of Officer Grade-II by order dated 11th March, 2004 (Annexure P/8), following the principles of seniority-cum-merit. The petitioners have further sought a writ for quashing the memo dated 24.12.2003 (Annexure P/5) with consequential relief.

2. The undisputed facts in nutshell are that the respondent-Bank is a Regional Rural Bank, sponsored by the State Bank of India. The Regional Rural Banks Act, 1976 (for short 'the Act, 1976') gives power by virtue of Section 29 of the Act, 1976 to the Central Government to make rules. Section 29 (a) provides that the Central Government may after consultation with the National Banks and Sponsor Banks by notification in the official gazette make rules for carrying out the provisions of this Act. Sub-section (2) (b) of the Act of 1976 also confers power on the Central Government to frame rules regarding the

manner in which the Officers and other employees of the Regional Rural Banks shall be appointed. Section 30 of the Act of 1976 contemplates about power to make regulations. Sub-section (1) of Section 30 provides that Board of Directors of the Regional Rural Bank may, after consultation with the Sponsor Bank and National Bank and with the previous sanction of the Central Government, by notification in the official gazette, make regulation, not inconsistent with the provisions of this Act and Rules made there-under to provide for all matters for which the provision is necessary or expedient for the purpose of giving effect to the provisions of the Act of 1976. Sub-section (2) of Section 30 of the Act of 1976 also provides that every regulation shall as soon as may be after it is made under the Act by the Board of Directors be forwarded to the Central Government and the Government shall cause a copy of the same to be laid before each House of the Parliament, while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions.

3. The Central Government vide notification dated 29th July, 1998 framed the Regional Rural Banks (Appointment and Promotion of Officers and other employees) Rules, 1998 (for short 'the Rules 1998') which came into force w.e.f. the date of the publication in the official gazette i.e. 27.9.1998.

4. As per the Rules, 1998 the vacancies of officers and other employees are to be filled up by each Regional Rural Bank, in accordance with these rules and subject to such guidelines as may be issued by the Central Government, from time to time. Third Schedule under Rule 6 provides for promotion from Scale I Officer to Scale II Officer on the basis of seniority-cum-merit, which is reproduced herein below:-

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"(a) Name of the post	Scale II Officer
(b) Classification	Group "A"
(c)Source of appointment	100% by promotion.
(d) Whether promotions to be made on seniority basis or seniority-cum-merit basis	Promotions shall be made on the basis of seniority-cum-merit.
(e) Eligibility	Officers holding post for eight years as an officer on regular basis in the Regional Rural Bank shall be considered promotion in scale II post in that Bank. Provided that no officer shall be considered for promotion unless he has been confirmed in the feeder grade post. Provided further that the board may, with the prior approval of National Bank, relax the qualifying service for a period not exceeding two years, if eligible officers are not available.

Note : (I) The officers eligible for promotion to the post of Area Managers/Senior Managers/officers scale II on or before the publication of this notification shall continue to be considered for promotion to Scale II officer post.

(II) The service of the incumbents, who are holding the post eligible for promotion before publication of this notification, shall continue for the purpose of promotion to Scale II officer post.

(f) Mode of selection	The selection of candidates shall be made by the committee on the basis of written test and interview and assessment of the Performance Appraisal Report for the preceding five years as an officer in scale-I field supervisor.
(g)Composition of Committee	The Committee (for considering promotion) shall consist of the following persons, namely:- (i) The Chairman of the concerned Regional Rural Bank Chairman. (ii) A Director nominated by the sponsor bank – Member. (iii) A Director nominated by National bank – Member.

Note : If none of the members of the Committee belongs to Scheduled Castes/Scheduled Tribes the Board may nominate a person belonging to Scheduled Castes/Scheduled Tribes as an additional member and such

persons shall participate in the process of selection by the concerned Committee.

(h) Reckoning of the minimum eligibility	The minimum eligibility in terms of the member of years of service for promotion shall be reckoned as on the 1st April of the year on which the vacancy is expected to arise or has actually arisen.
(i) Number of candidates to be considered for promotion	The number of candidates to be considered for promotion from officer scale I to officer scale II shall be restricted to four times the number of vacancies available for promotion.
(j) Selection Process for promotion.	The selection shall be on the basis of Performance in the written test, interview and Performance Appraisal Reports for preceding five years as per the division of marks given below:
(A) Written test	: 60 marks
(B) Interview	: 20 marks
(C) Performance Appraisal Reports	: 20 marks
Total marks	: 100 marks
(A) Written test (60 marks)	The Candidates shall be required to appear for written test comprising of two parts (A) covering Banking Law and Practice of Banking and Part (B) covering Credit Policy, Credit Management including Priority Sector, Economics and Management. : 60 marks allotted to written test shall be further divided as under: :Part "A" 30 marks :Part "B" 30 marks : A list of only those candidates who secure a minimum on 40% marks in each part shall be prepared and such candidates shall be called for interview.
(B) Interview (20 marks)	: There shall be no minimum qualifying marks for the interview.
(C) Performance appraisal reports (20 marks)	: Performance Appraisal Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion."

5. The benchmark for qualifying the written test was securing minimum 40% marks in each part and no minimum qualifying marks was provided for interview. By circular dated 24.12.2003 (Annexure P/5), the same selection process as prescribed in the Rules, 1998 was accepted by the Board of Directors to appoint 27 vacant posts of Scale-II Officers. This circular is impugned in this petition.

6. Shri Sanjay K. Agarwal, learned counsel appearing for the petitioner submitted that the selection process as prescribed in the Rules and also in the impugned circular are bad as no minimum qualifying marks for the interview is provided. The basis of promotion i.e. seniority-cum-merit has been seniority-cum-written test as 20 marks allotted for interview and performance appraisal has not been taken into consideration for fixing the qualifying marks.

7. Shri P. R. Patankar, learned counsel appearing for the respondents, on the contrary, submitted that not prescribing minimum qualifying marks for the interview does not vitiate the selection, as candidates, who had secured the minimum 40% marks in the written test alone were qualified to appear in the interview and their appraisal reports are considered. Learned counsel further submitted that having appeared in the examination, the petitioners are estopped from challenging the selection process.

8. Shri P. S. Koshy, learned counsel appearing for the respondents No. 3 to 20 while adopting the submission of the respondent-Bank further contended that the point of law and facts involved in the present case are squarely covered by the decisions of the Supreme Court in the cases of **Hargovind Yadav Vs. Rewa Sidhi Gramin Bank & Ors.**[1] and **R. V. Sivaiah and others Vs. K. Addanki Babu and others**[2].

9. I have heard learned counsel for the parties and perused the pleadings and the documents annexed to the petition and also to the return.

10. The facts, as stated above by the petitioners, are admitted by the parties. The question for consideration in this petition is that as to whether under seniority-cum-merit criteria for promotion, prescription of minimum qualifying marks in interview is the necessary requirement, when the minimum qualifying marks have been prescribed in the written test and whether the same is against the dicta laid down by the Supreme Court in the above stated cases.

11. The Supreme Court has considered the mode of selection of various Banks in the case of **B. V. Sivaiah and others**(Supra). In the matter of **Rayalaseema Grameena Bank,** wherein the selection was made by Circular dated 27.9.1989, setting apart 34 marks for seniority, 10 marks for qualification, 20 marks for interview and 56 marks for performance, out of total number of 120 marks, the minimum number of marks that could be awarded for seniority was 34 and 0.75 mark for each completed month of service over and above the minimum qualifying service, it was the case where only six officers had secured the highest number of marks were ultimately promoted and it was not the case that minimum qualifying marks were prescribed for merit and thus who secured the minimum qualifying marks were promoted on the basis of seniority, it was held that the mode of selection was contrary to the principle of seniority-cum-merit. In the matter of **Pinakini Grameena Bank,** the selection was made of only those officers, who secured the highest number of marks amongst the eligible officers and it was held that the method of selection was contrary to the principle of seniority-cum-merit.

12. In the case of **B. V. Sivaiah and others**(Supra) the Supreme Court has considered the Second Schedule to the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988, which provides the promotion criteria. The criteria of promotion on the basis of seniority-cum-merit on the post of Area Manager-cum-Senior Manager. In that case the Supreme Court in para 18 observed, as under:-

> *"18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."*

13. In the matter of **Hargovind Yadav**(Supra) the Supreme Court in paragraphs 17 and 18 held as under:-

> *" 17. Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of 'seniority-cum-merit....."*
>
> *"18.....As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum*

merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview. The fact that the appellant had failed to secure the minimum marks in interview, is not relevant as the entire procedure adopted by the Bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of seniority-cum-merit."

14. In the present case the minimum qualifying marks were prescribed for assessment of merit in written test. Thereafter, the marks awarded in interview and performance appraisal did not provide for any minimum qualifying marks that in fact provides for comparative assessment of the candidates, who had obtained minimum qualifying marks in the written test. Out of total 100 marks, 60 marks were set apart for written test, 20 marks for interview and 20 marks for performance appraisal report and the minimum qualifying marks does not include the marks obtained in interview as well as the performance appraisal reports.

15. In the facts of the case and in view of the dicta laid down by the Supreme Court in the cases cited above, the interview and the appraisal performance did not provide for minimum qualifying marks and it was comparative assessment on merit. Thus, the mode of selection prescribed was not on the basis of principle of seniority-cum-merit but on merit-cum seniority. Thus, the entire selection process is vitiated, not being in consonance with the principle of seniority-cum-merit.

16. With regard to the next contention that the petitioners be estopped from raising the question of selection process, after having appeared and failed in the selection. In the facts of the case, when the criteria of promotion was seniority-cum-merit and the respondents No. 1 and 2,

in fact have followed the criteria of merit-cum-seniority, having more emphasis on merit than seniority, after having examined the suitability of the candidates on the basis of minimum qualifying test, the promotion ought to have been made on the basis of seniority. The petitioner cannot be held as debarred from questioning the basis of selection criteria.

17. As a result and for the reasons stated-above, this petition is allowed and the circular dated 24.12.2003 and the impugned selection process consequent thereupon stand quashed, being contrary to the principle of seniority-cum-merit. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

(2006 AIR SCW 2822[1]) {(1998) 6 SCC 720[2]}

Thakur